

DIVISION OF LABOR STANDARDS AND SAFETY ENFORCEMENT

Explosives

Proposed Redoation: N.J.A.C. 12:190

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 21:1A-128 et seq.; specifically 21:1A-131.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-39.

A public hearing on the proposed redoation will be held on the following date at the following location:

Thursday, February 13, 2003
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by March 22, 2003 to:

Frederick S. Cohen, Regulatory Officer
Office of Regulatory Services
Department of Labor
PO Box 110
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

If you need this document in Braille, large print or audiocassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

These rules proposed for redoation, which pertain to the manufacture, storage, transportation, use and sale of explosives, are scheduled to expire on July 26, 2003, pursuant to N.J.S.A. 52:14B-5.1c. After a review thereof, the Department has concluded that they should be redopted without amendments. They are being repromulgated in order to continue implementation of N.J.S.A. 21:1A-128 et seq., the Explosives Act, and to ensure that both the citizens of this State and their property will be afforded the necessary protections which emanate from the standards established thereunder. The rules proposed for redoation, by subchapter, are as follows:

Subchapter 1 sets forth the general provisions, including the purpose and scope of the rules.

Subchapter 2 contains the definitions used in the rules.

Subchapter 3 delineates the procedures for the issuance of permits, the payment of fees, the recordkeeping required for permit holders and reporting procedures.

Subchapter 4 deals with the manufacture and storage of explosives.

Subchapter 5 delineates the manner in which explosives should be stored.

Subchapter 6 deals with the transportation of explosives off of the highway.

Subchapter 7 concerns the use of explosives.

Subchapter 8 continues to be reserved.

Subchapter 9 applies to the storage, handling and mixing of blasting agents.

Subchapter 10 applies to the storage of smokeless powder and black powder for the reloading of small arms ammunition and the channels of distribution for the users thereof.

Subchapter 11 deals with the sale of explosives.

Subchapter 12 sets forth the administrative penalties for violations of the Explosives Act and the due process rights of alleged violators of the Act.

Subchapter 13 lists the standards and publications referred to in the proposed redoation.

Because the Department has provided a 60-day comment period for this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for redoation will have a positive social impact since they will continue to protect the health, safety and welfare of the public by maintaining enforceable standards for the manufacture, sale, transportation, storage, use, possession and disposition of explosives. In addition, the rules provide the Department with sufficient funding to maintain the inspection regimen established within the Explosives Act, N.J.S.A. 21:1A-128 et seq. They also provide alleged violators of the Act with a due process framework within which to challenge notices of violation and penalties imposed as a result thereof.

Economic Impact

The rules proposed for redoation will have an economic impact on all individuals who manufacture, store, use, sell, possess or dispose of explosives. The redoation of these rules will not present any additional changes in the economic impact on the public or others. The costs of the rules for redoation currently impose on those regulated appear in the form of permit fees, penalties for noncompliance with the rules, the acquisition of special precautionary equipment for storage and special signs for off-the-highway transportation of the explosives. In addition, those subject to this chapter will also bear the administrative and maintenance costs of the reporting and recordkeeping requirement as described in the Regulatory Flexibility Analysis below.

Because of the diversity of the various companies within the explosive industry, an exact dollar amount for this impact cannot be established. It varies from business to business. Continued compliance with the rules will help prevent a significant negative economic impact, such as that resulting from a public disaster caused by the unsafe use of explosives. As in the past, operators found in violation during inspections will still be required to take corrective actions. There will be no additional costs to those operators in compliance with these rules. Only violators will incur additional costs in the form of penalties for noncompliance. As a result of these rules, the public will continue to benefit from the reduced risk of injuries and loss of life and property. The Department will not require additional professional services to comply with these rules.

Federal Standards Statement

The rules proposed for redoation do not exceed standards or requirements imposed by Federal law, as there are no such standards or requirements applicable; rather, they continue to implement provisions of the New Jersey Explosives Act, N.J.S.A. 21:1A-128 et seq. As a result, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for redoation will have no impact on jobs. The Department does not anticipate an increase or decrease in jobs as a result of the rules proposed for redoation.

Agriculture Industry Impact

The rules proposed for redoation will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for redoation impose some recordkeeping and reporting requirements upon the explosive industry sector, some of which may be considered small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The recordkeeping and reporting requirements are specified in N.J.A.C. 12:190-3, Administration. These statutory requirements call upon the explosives industry to maintain accurate information regarding the supplier, quantities, brand, type and manufacturer's identifying marks, the date of all invoices and transactions and the disposition and/or disposal of all explosives. A set time frame is also established by the rules indicating how long these permanent records must be maintained. The rules request detailed information for each individual permit to manufacture, sell, store or use explosives. All accidents resulting in injury to a person or serious property damage, as well as, losses by theft or otherwise must be immediately reported by the permit holder for the explosive(s) involved to the Office of Safety Compliance, Division of Workplace Standards. All persons holding permits to store, use or

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sell commercial explosives must also file monthly reports on special forms which may be secured from the Office of Safety Compliance.

Those subject to this chapter are also required to obtain permits, to acquire special precautionary equipment for storage, and to obtain and display special signs for off-the-highway transportation of the explosives. The costs of these requirements are discussed in the Economic Impact above.

The employment of professional services outside the regulated explosives sector is not necessary in order for this regulated industry to come into compliance with the rules which require the acquisition of permits, precautionary equipment for storage and the display of special signs for off-the-highway transportation of explosives. As stated above, the vast majority of this regulated industry already possess the permits, precautionary equipment for storage and the special signs for off-the-highway transportation of explosives. New businesses to this industry will be able to comply with all the chapter's requirements without the assistance of outside professional services. The newcomers will be able to pay the permit fees as stated in the rules at N.J.A.C. 12:190-3.14, buy the precautionary storage equipment, and make the special signs for off-the-highway transportation of explosives by following the detailed specifications contained in N.J.A.C. 12:190-6.4.

Any exemption from these rules would endanger the health, safety and general welfare of the public. Because of the dangerous and sometimes disastrous nature of injuries caused by the unsafe use of explosives, no differentiation based on business size is necessary or appropriate. All businesses must equally comply.

Smart Growth Impact

The rules proposed for readoption will not have an impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:190.
